

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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VICTOR RUIZ,

Plaintiff,

v.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 3:23-cv-00317-ART-CSD

ORDER ADOPTING REPORT AND
RECOMMENDATION (ECF NO. 5),
DENYING MOTION (ECF NO. 4), AND
DISMISSING CASE

Pro se Plaintiff Victor Ruiz, an inmate in the Elko County Jail, brings this action under 42 U.S.C. § 1983 against Defendants State of Nevada and the Elko County Courthouse challenging his confinement and alleging ineffective assistance of counsel. Before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Craig S. Denney (ECF No. 5), recommending dismissal of Mr. Ruiz’s Complaint (ECF No. 1-1) and denial of his Motion for Leave to Proceed *in Forma Pauperis* (ECF No. 4) as moot because Mr. Ruiz has brought claims that are not cognizable by this Court. Mr. Ruiz had until September 28, 2023 to file an objection to Judge Denney’s R&R. (ECF No. 5 at 2.) As of today, no objection has been filed. For this reason, and as explained below, the Court adopts the R&R, dismisses Mr. Ruiz’s complaint without prejudice, and denies his Motion to Proceed *in Forma Pauperis* as moot.

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party fails to object to a magistrate judge’s recommendation, the Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the

1 magistrate judges’ findings and recommendations is required if, but *only* if, one
2 or both parties file objections to the findings and recommendations.”) (emphasis
3 in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that
4 the Court “need only satisfy itself that there is no clear error on the face of the
5 record in order to accept the recommendation.”).

6 Because there is no objection, the Court need not conduct *de novo* review
7 and is satisfied Judge Denney did not clearly err. Judge Denney recommends
8 dismissal of Mr. Ruiz’s Complaint because this Court has no power to hear his
9 claims. Specifically, Judge Denney notes that (1) a challenge to confinement
10 must be brought as a petition for writ of habeas corpus, after state remedies
11 have been exhausted, and (2) “a Sixth Amendment claim for ineffective
12 assistance of counsel must be raised in a direct appeal, post-conviction . . . and
13 not in an action under section 1983.” (ECF No. 5 at 1.) Judge Denney notified
14 Mr. Ruiz of the above issues on August 7, 2023 and invited Mr. Ruiz to clarify
15 whether Judge Denney had misinterpreted some aspect of his Complaint. (ECF
16 No. 3 at 5.) Mr. Ruiz did not respond.

17 Having reviewed the R&R and the record in this case, the Court is satisfied
18 that Judge Denney did not clearly err and adopts the R&R in full.

19 It is therefore ordered that Judge Denney’s Report and Recommendation
20 (ECF No. 5) is accepted and adopted in full.

21 It is further ordered that Mr. Ruiz’s Complaint (ECF No. 1-1) is dismissed,
22 without prejudice.

23 It is further ordered that Mr. Ruiz’s Motion to Proceed *in Forma Pauperis*
24 (ECF No. 4) is denied as moot.

25 The Clerk of Court is directed to enter judgment accordingly and close this
26 case.

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1 Dated this 12th day of January 2024.

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5 ANNE R. TRAUM
6 UNITED STATES DISTRICT JUDGE
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